

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

CV 16-00051-D-DLC-JTJ

In re: GREGORY L. WALLACE

**FINDINGS AND
RECOMMENDATIONS OF
UNITED STATES MAGISTRATE
JUDGE**

Plaintiff Gregory Wallace, a prisoner at Montana State Prison, proceeding without counsel, filed a nearly incomprehensible document which the Court construes as a civil complaint. (Doc. 1.) On June 29, 2016, the Court ordered Mr. Wallace to pay the filing fee or file a motion to proceed in forma pauperis along with a brief on whether he was in imminent danger of serious physical injury. (Doc. 2.) Mr. Wallace filed a motion for leave to proceed in forma pauperis on August 9, 2016, (Doc. 3) but he did not file a brief on whether he was in imminent danger of serious physical injury.

As set forth in the Court's prior Order, 28 U.S.C. § 1915(g) provides as follows:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on

3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

Mr. Wallace has filed four civil actions which have been dismissed for failure to state a claim. *See Wallace v. N. Cheyenne Corrections Officers, et al.*, CV-09-00116-BLG-RFC-CSO (D. Mont. Judgment of dismissal filed December 30, 2009); *Wallace v. Hamm, et al.*, CV-12-00073-BLG-RFC (D. Mont. Judgment of dismissal filed October 5, 2012); *Wallace v. Sioux-Assinniboine Corrections, et al.*, CV-15-00030-GF-BMM (D. Mont. Judgment of dismissal filed November 16, 2015); and *Wallace v. CIA/BIA Corrections, et al.*, CV-15-00055-M-DLC (D. Mont. Judgment of dismissal filed January 6, 2016).

Mr. Wallace has exceeded the three “strikes” allowed by the Prison Litigation Reform Act to a prisoner attempting to proceed in forma pauperis in a federal civil lawsuit, and he has failed to show that he qualifies for the “imminent danger of serious physical injury” exception of 28 U.S.C. § 1915(g).

Based upon the foregoing, the Court issues the following:

RECOMMENDATION

The motion to proceed in forma pauperis (Doc. 3) should be DENIED. The Court should direct the Clerk of Court to close the case and enter judgment

pursuant to Rule 58 of the Federal Rules of Civil Procedure if Wallace fails to pay the \$400.00 filing fee within thirty days.

DATED this 30th day of August, 2016.



John Johnston
United States Magistrate Judge